

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN CHRISTOPHER CRANDALL

Appeal 2007-1412
Application 09/822,152
Technology Center 2100

Decided: August 29, 2007

Before LANCE LEONARD BARRY, ANITA PELLMAN GROSS, and
JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1 through 20. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal.

We reverse.

Appellant invented a method and system for censoring documents for sensitive information. Particularly, the invention entails the use of a censor database (100) and a text comparator (101) for locating sensitive terms in a document (10). The invention further involves a generalization database (104) for subsequently replacing the sensitive terms with alternate expressions of a more generalized nature. (Specification 6).

An understanding of the invention can be derived from exemplary independent claim 1, which reads as follows:

1. A computerized document censor comprising:

a censor database of restricted terms;

a text comparator program for finding ones of said restricted terms in said document; and

a text highlighter program for highlighting said restricted terms found in said document.

In rejecting the claims on appeal, the Examiner relies upon the following prior art:

Aras	US 5,757,417	May 26, 1998
Cragun	US 5,832,212	Nov. 3, 1998
Lapierre	US 6,075,550	Jun. 13, 2000
DeStefano	US 6,184,885 B1	Feb. 6, 2001
Dieterman	US 6,393,464 B1	May 21, 2002
Goddard	US 6,684,240 B1	Jan. 27, 2004

The Examiner rejects the claims on appeal as follows:

A. Claims 1, 3, 4, 9 through 12, and 16 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lapierre, Goddard, and DeStefano.

B. Claims 2 and 5 through 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lapierre, Goddard, DeStefano and Cragun.

C. Claims 13 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lapierre, Goddard, DeStefano and Aras.

D. Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lapierre, Goddard, DeStefano and Dieterman.

ISSUES

Appellant contends¹ that the combination of Lapierre, Goddard, and DeStefano yields no expectation of success, and would render the prior art invention unsatisfactory for its intended purpose. (Br. 7.) More specifically, Appellant contends the following:

Lapierre expressly teaches away from the use of a rating system, see column 2, lines 14-21. In contrast, the system of *Goddard* could not operate without rating information accompanying the content to facilitate the censorship determination. The proffered combination of *Lapierre* and *Goddard* is fundamentally incompatible, and thus, there can be no expectation of success... The purpose of *Lapierre* is to screen closed-captioning content so that it may be viewed safely. Blocking the entire closed-caption data stream, as would result from the proffered combination of *Lapierre* in view of *Goddard*, would

¹ This decision considers only those arguments that Appellant submitted in the Appeal Brief. Arguments that Appellant could have made but chose not to make in the Brief are deemed to have been waived. See 37 C.F.R. § 41.37(c)(1) (vii)(eff. Sept. 13, 2004). See also *In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

prevent any viewing of the closed captioning, therefore preventing a safe viewing or any other viewing. Therefore, modifying *Lapierre* with *Goddard*, if even possible, would result in the preventing safe, censored viewing of the closed-captioning content, thus rendering *Lapierre* unsatisfactory for its intended purpose.

(Brief 10.)

Further, Appellant contends that the Examiner's suggested modification of *Lapierre* by integrating DeStefano's highlighting of words therein would also render *Lapierre* unsatisfactory for its intended purpose. Instead of removing the objectionable language from the caption, as contemplated by *Lapierre*, the proposed modification would highlight the objectionable language in order to draw the viewer's attention to the potentially offensive material. One of ordinary skill would not have been led to draw the attention of a viewer, such as a child, to highlighted objectionable text in the closed captioning displayed by *Lapierre*. (*Id.* 9.) In response, the Examiner contends that one of ordinary skill would have been motivated to combine the cited references because it would have drawn the attention of the viewer to the potentially offensive material used to adjust the content rating parameters. (Answer 4 and 11.)

The *pivotal* issue in the appeal before us is as follows:
Has Appellant shown² that the Examiner failed to establish that one of ordinary skill in the art, at the time of the invention, would have found that the combined disclosures of Lapierre, Goddard and DeStefano render the claimed invention unpatentable under 35 U.S.C. § 103(a)? More particularly, would the ordinarily skilled artisan have been led to modify Lapierre's closed-caption system by highlighting potentially objectionable words, previously blocked by Lapierre's system, in order to draw the viewer's attention to such words to adjust their contents?

FINDINGS OF FACT

The following findings of fact are supported by a preponderance of the evidence.

² In the examination of a patent application, the Examiner bears the initial burden of showing a prima facie case of unpatentability. *In re Piasecki* 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; see also *In re Harris*, 409 F.3d 1339, 1343-44, 74 USPQ2d 1951, 1954-55 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the prima facie case of unpatentability is dissipated. *Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred -- on appeal we will not start with a presumption that the Examiner is wrong.

The Invention

1. Appellant invented a censor method and system that reviews documents for filtering selected sensitive terminology in said document. (Specification 4.)
2. As depicted in Figure 1, the censor system uses a text comparator (101) to match terms in the document (10) with prohibited or sensitive terms in a censor database (100). (*Id.* 6.)
3. Upon locating sensitive terms in the document, a highlighter (102) highlights those terms and visibly draws the user's attention to such terms at a graphical user interface display (103). (*Id.*)
4. Subsequently, alternate expressions (correlated with sensitive terms in the censor database) of a more generalized nature stored in a generalization database (104) are used to replace the highlighted sensitive terms. (*Id.*)

The Prior Art Relied upon

5. Lapierre teaches a censoring system for use with a closed caption television. The censoring system includes a closed caption decoding device for converting a closed caption signal into uncensored text. The censoring system also includes a censoring device for deleting potentially offensive words in the uncensored text that match words on a list of preloaded offensive words. (Abstract.)
6. Lapierre teaches that the closed caption system is intended to remove undesired words and phrases from the closed caption associated with programming viewed on television. (Col. 1, ll. 24-31.)
7. Lapierre indicates that the censoring system is intended to remove undesired parts of a program (i.e. objectionable language from the closed

caption rather than censoring entire programs, which depend on a rating system.) (Col. 2, ll. 15-21.)

8. Goddard teaches a method and content control system for setting and adjusting the content rating parameters of a television program to block or unblock future access to the program in its entirety. (Col. 3, ll. 28-55.) The content control system compares the content rating of an example content to previously set acceptable content rating parameters and adjusts the content rating parameters of the system based on the comparison to block or unblock future access to the example content and content similar to the example content. (Col. 2, ll. 47-52.)

9. DeStefano teaches a method and system for highlighting logically related terms within a document to visually showcase the relationship between various concepts within said document. (Col. 3, ll. 6-22.)

PRINCIPLES OF LAW

1. OBVIOUSNESS (Prima Facie)

The Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), stated that three factual inquiries underpin any determination of obviousness:

Under § 103, [1] the scope and content of the prior art are to be determined; [2] differences between the prior art and the claims at issue are to be ascertained; and [3] the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding

the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Where the claimed subject matter involves more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness must be based on “an apparent reason to combine the known elements in the fashion claimed.” *KSR Int’l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007). That is, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, 127 S. Ct. at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Such reasoning can be based on interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art. *KSR*, 127 S. Ct. at 1740-41, 82 USPQ2d at 1396.

2. OBVIOUSNESS (Teaching away/Expectation of success)

The determination of obviousness must consider, inter alia, whether a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and whether there would have been a reasonable expectation of success in doing so. *Brown & Williamson Tobacco Corp. v. Philip Morris, Inc.*, 229 F.3d 1120, 1124 [56 USPQ2d 1456,1458-59] (Fed. Cir. 2000). *Medichem S.A. v. Rolabo S.L.*, 437 F.3d

1157, 1164, 77, USPQ2d 1865, 1869 (Fed. Cir. 2006). Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991.) If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984.) Further, our reviewing court has held that:

A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994); *See also Para-Ordnance Mfg. v. SGS Importers Int'l*, 73 F.3d 1085, 1090, 37 USPQ2d 1237, 1241 (Fed. Cir. 1995).

ANALYSIS

A. 35 U.S.C. § 103(a) REJECTION

We begin our analysis by noting that all the independent claims (1, 9 and 16), currently pending before us, require the limitation of highlighting/visibly marking restricted/objectionable terms found in a document. (Br. Appendix A.) As detailed in the Findings of Fact section above, we found that Lapierre discloses a closed caption system for retrieving objectionable terms in a television program, and blocking them from the displayed caption to prevent the viewer from seeing them. (Findings 5 and 6.) Further, we

found that Goddard teaches setting and adjusting the rating parameters of a program to block or unblock a viewer's access to said program. (Finding 8.) We agree with Appellant that combining Goddard's disclosed system with Lapierre's would not yield a reasonable expectation of success as such a combination would render Lapierre's system unsatisfactory for its intended purpose. Particularly, the ordinarily skilled artisan would have aptly recognized that integrating into Lapierre's system Goddard's teaching of blocking a program due to a detected objectionable content therein would deprive the viewer of such system of the entire program including the captions. Similarly, integrating Goddard's teaching of unblocking a previously blocked program into Lapierre's system, as suggested by the Examiner, would yield the undesirable result of displaying the objectionable contents that the Lapierre system seeks to block. This is due to the fact that Goddard operates to either block or unblock a program *in its entirety* depending on whether or not the program contains objectionable material. Further, we agree with Appellant that Goddard teaches away from the Lapierre reference. Lapierre specifically discourages the ordinarily skilled artisan from following the path set forth in the Goddard patent by recommending to merely block the undesired terms in the captions as opposed to blocking the entire program. (Finding 7.) Therefore, we conclude that the Examiner improperly combined Lapierre and Goddard to yield the claimed invention.

Additionally, we agree with Appellant that combining DeStefano with Lapierre would not yield a reasonable expectation of success and would render Lapierre's system unsuitable for its intended use. We find that the

ordinarily skilled artisan would have readily recognized that incorporating DeStefano's teaching into Lapierre's system would defeat the intended purpose of such system. In other words, by highlighting an objectionable term within a document, DeStefano's teaching would bring to the viewer's attention the offensive terms in the caption that Lapierre intended to block. Therefore, we conclude that the Examiner improperly combined Lapierre with DeStefano. It follows that the Examiner erred in rejecting claims 1, 3, 4, 9 through 12, and 16 through 19 as being unpatentable over the combination of Lapierre, Goddard and DeStefano. We find that the Examiner erred in rejecting dependent claims 2, 5 through 8, 13, and 20 since neither Cragun nor Aras cures the deficiencies of the Lapierre, Goddard, and DeStefano combination.

CONCLUSION OF LAW

On the record before us, Appellant has shown that the Examiner failed to establish that claims 1 through 20 are unpatentable over the combination of Lapierre, Goddard, DeStefano, Cragun and/or Aras under 35 U.S.C. § 103(a).

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DECISION

We have reversed the Examiner's decision rejecting claims 1 through 20.

REVERSED

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